Filed 6/5/19 Tibbett v. L.A. County Fire Dept. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JOSHUA TIBBETT, Plaintiff and Appellant, v. LOS ANGELES COUNTY FIRE DEPARTMENT et al., Defendants and Respondents.	B282759 (Los Angeles County Super. Ct. No. PC053570)

APPEAL from a judgment of the Superior Court of Los Angeles County, Melvin D. Sandvig, Judge. Affirmed.

Law Office of Sean Musgrove, Sean A. Musgrove, Jeff A. Mann and Sam Stamas for Plaintiff and Appellant.

Hurrell Cantrall, Thomas C. Hurrell and Melinda Cantrall for Defendants and Respondents.

Plaintiff Joshua Tibbett appeals from a judgment entered after a jury trial in favor of defendants Los Angeles County Fire Department (Department) and Fire Captain Gary Marshall. Tibbett filed this action after he was injured when Marshall kicked him in the groin during a workplace self-defense demonstration. The jury found Marshall did not intend to harm Tibbett, and therefore Tibbett's claims were barred under Labor Code sections 3600 and 3601,[1] which makes workers' compensation the exclusive remedy for nonintentional workplace injuries. On appeal, Tibbett contends the jury returned inconsistent findings on its special verdict form, and the verdict was not supported by substantial evidence. Tibbett also asserts the trial court erroneously excluded testimony from another employee about incidents in which Marshall struck him in the groin and improperly limited Tibbett's closing argument. Tibbett also argues cumulative error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Complaint*

On January 10, 2013 Tibbett filed the operative first amended complaint alleging causes of action for battery against Marshall under section 3601, subdivision (a)(1), and for ratification against the Department under section 3602, subdivision (b)(1).[2] Each cause of action arose from an alleged

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[1] All further undesignated statutory references are to the Labor Code.

[2] The first amended complaint also alleged causes of action for negligence, sexual battery, strict liability, intentional infliction of emotional distress, and breach of contract. Tibbett

incident on February 19, 2011 during which Marshall "asked [Tibbett] to stand up, placed a clipboard in his face thereby obstructing his view, and then kicked him in the groin area with his steel toed shoe."

B. *Testimony at Trial*

1. *Tibbett*

Tibbett worked as a firefighter and paramedic for the Department. At the time of trial, he had been employed by the Department for almost 11 years.

On February 17, 2011, while on duty as lead paramedic, Tibbett responded to a hospital in Lancaster on an emergency call for a patient in "full arrest," meaning the patient had no heartbeat and was not breathing. When he arrived, two individuals who had brought the patient to the hospital were "yelling and cursing" at hospital staff. While Tibbett was attempting to assist the patient, one of individuals "got [in his] face" and "was spitting" on Tibbett, "chest bumping" him, and "[c]alling [him] racial slurs." Tibbett attempted to create distance by putting his hand on the individual's chest. Paramedic Kevin Hardie came to Tibbett's aid, standing between Tibbett and the hostile individual, which allowed Tibbett to continue assisting the patient.

On February 19, 2011 Tibbett reported to his next shift. During the morning briefing, Tibbett, Hardie, and Los Angeles County Fire Captain William Gamble talked with Marshall about

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requested dismissal of his negligence claim before trial, and only his claims for battery and ratification by the Department were submitted to the jury. The record on appeal does not reflect the disposition of the other claims.

Tibbett's encounter with the hostile individual. Tibbett complained about how the captain on the scene handled the encounter. Tibbett believed the captain should have immediately called the sheriff once the paramedics encountered the irate individuals.

Marshall then told Tibbett to stand up. Tibbett was reluctant and asked, "What are you going to do?" Marshall did not respond. Tibbett stood up without knowing what Marshall planned to do. Marshall held up a piece of paper near Tibbett's face and said, "Pretend that this paper is the clipboard that we carry on our apparatus and this is what you can do next time to get somebody away from you." Tibbett understood Marshall was conducting a role playing exercise in which Marshall was the firefighter and Tibbett was an aggressive individual. As Tibbett put his hands up to block the paper in his face, Marshall kicked him hard in the groin. Tibbett fell to his knees, and Marshall asked him what happened. Tibbett replied, "You got me." Marshall then left the room, without apologizing or asking whether Tibbett had been hurt.

Tibbett experienced great pain and went to the hospital that night. He was told he would be fine in a week, but several days later he began to experience increased pain and swelling. After seeing a urologist, Tibbett had emergency surgery to remove his left testicle. Tibbett underwent several more surgeries and was rendered sterile.

On cross-examination, defense counsel asked Tibbett whether "before [the] incident occurred, [he] liked Captain Marshall quite a bit" and "enjoyed working for [Marshall]." Tibbett responded, "Yes, sir." Tibbett acknowledged he and Marshall had interacted socially, and he felt "quite close" to

Marshall. When asked whether he believed Marshall intended to hurt and humiliate him in front of his coworkers despite their good relationship, Tibbett responded, "Yes, sir," but added he did not believe Marshall intended to hurt him "as bad as he did." Defense counsel then read from a transcript of Tibbett's deposition, "Q Do you think [Marshall] intentionally wanted to hurt you? [¶] A No."

Tibbett did not know whether Marshall was angry with him before the incident, but added, "I don't know if he was upset that I was talking about another captain not getting the sheriff fast enough . . . ." In the weeks before he was injured, Tibbett and Marshall were getting along fine. Tibbett was not aware of any reason Marshall would intentionally hurt him.

Defense counsel introduced several documents from Tibbett's medical records in which Tibbett described his injury as the result of an "accident." In one questionnaire, Tibbett wrote, "I was kicked in [the] left testicle by Captain at work. It was [an] accident from him." Tibbett testified he used the word "accident" to mean "incident" or "injury," not to mean what happened was "accidental."

2. *Marshall*

Marshall had worked for the Department for over 31 years, and served as a fire captain for approximately nine years. Marshall had known Tibbett for 12 or 13 years and knew Tibbett's father, who was also a firefighter with the Department. Marshall had never been disciplined while working for the Department.

Marshall and his crew responded quickly to calls for service, and would sometimes arrive on the scene before law

enforcement arrived. While responding to service calls, Marshall and his crew would occasionally encounter unruly or combative individuals. Marshall intended to address this type of situation with his February 19, 2011 demonstration.

On the morning of February 19 Tibbett told Marshall about encountering the hostile individual two days earlier during a service call at the hospital. Tibbett was "very upset" about the incident. Marshall decided to show Tibbett and the other firefighters a "maneuver that would keep the patient further away from him" in such situations. Marshall acknowledged he had never had any self-defense training, and it was not required for firefighters. Marshall described the maneuver: "[W]hen the patient or aggressor is coming towards you and you have the clipboard in your hand, you can block the view of the person. [B]ecause they don't know anything that's coming, you can grab them by the arm, you can take them to the ground, [or] you can push them back. [¶] My point was to try and keep the aggressor off the firefighter." Marshall learned of the maneuver "through the Department," but did not recall who taught it to him. Marshall had never used the maneuver while on duty.

Marshall asked Tibbett to stand, and he positioned Tibbett across from him for the maneuver. Marshall did not tell Tibbett what he was going to do. Marshall began to demonstrate the maneuver, but Tibbett "lunged forward" toward him. Marshall stopped and instructed Tibbett "to step back again, which he did." Marshall then instructed Tibbett to stand there. The two were about four feet apart. Marshall stated, "I went to put the papers up and then I brought my foot up . . . . He lunged. We made contact." Tibbett's counsel asked what Marshall meant by

"lunged." Marshall replied, "He stepped aggressively towards me."

Tibbett kneeled, and Marshall asked him what was wrong, because Marshall believed he had only made contact with Tibbett's thigh. Tibbett responded, "You got me." Marshall asked Tibbett whether he needed any medical attention, but Tibbett said "it would be fine." Marshall did not intend to make physical contact with Tibbett or hurt him in any way. Marshall regretted the injury he caused Tibbett "every day," and characterized the incident as "one of the worst things that's happened" in his life.

Marshall supervised Tibbett for approximately one year before the incident. Marshall described Tibbett as an excellent employee, whom he treated like a son. The two were "really close" and had "a good relationship" with a lot in common, including that both of their fathers had been firefighters. When asked if there was "anything going on in [his] mind" that led him to want to hurt Tibbett at the time of the incident, Marshall replied, "Absolutely not." In a performance evaluation dated two weeks before the incident, Marshall wrote that Tibbett was "outstanding . . . for his consistent display of good work, ethics and motivation for his job and his willingness to support the team regardless of the situation."

On cross-examination, Tibbett's counsel asked Marshall if he had ever "kicked anybody before" or "grabbed anybody by the groin before." Marshall responded "[n]egative" to both questions.

3. *Gamble and Hardie*

Gamble testified he was present for Marshall's self-defense demonstration. Gamble stated, "I observed what I feel was an

accident and where Captain Marshall was giving the crew instruction on how to protect themselves and be safe when confronting a hostile . . . bystander . . . ." Prior to the demonstration, Tibbett told the group about his confrontation with the hostile individual at the hospital days earlier. Gamble explained, "I believe [Tibbett] said, 'Well, next time I am just going to choke them out.'" Marshall responded, "No, you don't want to do that. It opens yourself up to being struck and potential liability, and here is a better technique." Once Marshall and Tibbett were standing across from one another, Marshall told Tibbett, "So don't move." Marshall told the group to "raise the papers up and . . . kick." Marshall then slowly kicked at the same time Tibbett "made a playful lunge towards the papers to try to knock the papers out of [Marshall's] hand." Gamble "saw [what] appeared to be a glancing blow," with Marshall's foot striking Tibbett's leg.

Gamble had worked with Marshall for about a year. According to Gamble, "Captain Marshall treated [Tibbett] kind of like a son . . . ." Gamble was unaware of any fights or arguments between Marshall and Tibbett before Tibbett's injury.

Hardie testified Marshall's kick to Tibbett's groin "appeared to be an accident." Hardie believed Marshall had been attempting to demonstrate a technique for the benefit of his subordinates. Asked why he believed it was an accident, Hardie responded, "I don't believe that Captain Marshall would intentionally injure a member of his crew." Hardie described Marshall's relationship with Tibbett as "a father-son type relationship"; by contrast, Hardie had a "working relationship" with Marshall that "wasn't as close." Hardie was not aware of

any fights or arguments between Marshall and Tibbett prior to the incident.

4. *Kevin Applegate*

Kevin Applegate testified he had worked for the Department for approximately eight years and knew Tibbett for over 20 years. Applegate worked under Captain Marshall's supervision on a number of occasions in 2013 and 2014. On direct examination, Tibbett's counsel Jeff Mann asked Applegate about his experience working under Marshall, as follows:

"Q. Have you ever received any self defense training in the fire department?

"A. No. [¶] . . . [¶]

"Q. Did Gary Marshall ever show you any self defense moves?

"A. No.

"Q. Did Gary Marshall ever grab you by the groin?

"[Defense counsel]: Objection. Relevance.

"The Court: Sustained.

"Mr. Stamas [for Tibbett]: Side bar, Your Honor.

"The Court: No. Sustained. [¶] Only the person asking the questions. I don't want other people objecting.

"Mr. Mann: Can I have a sidebar?

"The Court: No.

"Q[.] By Mr. Mann: Do you know whether Gary Marshall ever administered self defense training to anybody else in the department?

"A. No, not to my knowledge.

"Mr. Mann: I have no further questions.

"The Court: Anything?

"[Defense counsel]: No.

"The Court: You are excused."

The trial court then took a 15-minute recess. Mann did not again raise the trial court's exclusion of Applegate's testimony about whether Marshall had ever tried to grab him by the groin.

C. *Tibbett's Closing Argument*

Mann used a projector during his closing argument. During the argument, he raised eight aspects of Marshall's testimony, which he characterized as "inconsistent," to cast doubt on Marshall's credibility. He read to the jury from the projector screen several passages from a transcript of Marshall's trial testimony. When Mann reached his eighth example from Marshall's testimony, the trial court interjected:

"The Court: You can't read the whole deposition.[3] You can say the evidence proves something. I don't know how much more you got. You got more than one other page?

"Mr. Mann: I am not going to read the deposition.

"The Court: That's what you are doing. You are retrying the case on the board. Opening is what you think is going to [be] prove[d]. Closing is what you believe has been proved. You are reading—

"Mr. Mann: I am not going to go to any more testimony.

"The Court: Okay."

Mann then completed his argument without further interruption by the court.

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3 During Mann's closing argument there was some confusion as to whether Mann was reading from a transcript of Marshall's trial testimony or his deposition testimony. The record reflects Mann was reading from the trial testimony.

D. *The Jury Instructions, Verdict, and Judgment*

Tibbett's counsel (Stamas) objected to defense counsel's proposed jury instruction, CACI No. 2811, and the corresponding special verdict form question on the ground they were based on a cause of action for assault (instead of battery), and incorrectly required proof ". . . Marshall engage[d] in a physical act of aggression . . . that a reasonable person would perceive to be a real[,] present[,] and apparent threat of bodily harm." Stamas requested the trial court modify the jury instruction and special verdict form to ask whether "Gary Marshall touch[ed] Joshua Tibbett in a harmful and offensive manner." The trial court rejected the request.

The trial court instructed the jury with a modified version of CACI No. 2811, that to establish liability under section 3601, subdivision (a)(1), Tibbett must prove: "1. That Captain Gary Marshall engaged in a physical act of aggression that a reasonable person would perceive to be a real, present, and apparent threat of bodily harm; [¶] 2. That Captain Gary Marshall's physical conduct was willful and unprovoked; [¶] 3. That Captain Gary Marshall intended to harm Joshua Tibbett; [¶] 4. That Joshua Tibbett was harmed; and [¶] 5. That Captain Gary Marshall's conduct was a substantial factor in causing Joshua Tibbett's harm." A special verdict form was submitted to the jury tracking these elements.

The jury returned the following findings of fact in response to the questions presented on the special verdict form:

1. "Did GARY MARSHALL engage in a physical act of aggression towards JOSHUA TIBBETT that a reasonable person

would perceive to be a real, present, and apparent threat of bodily harm?" Answer: "Yes."

2. "Was GARY MARSHALL's conduct willful and unprovoked?" Answer: "Yes."

3. "Did GARY MARSHALL intend to harm JOSHUA TIBBETT?" Answer: "No."

On March 15, 2017, based on the jury's findings on the special verdict form, the trial court entered judgment in favor of defendants.

E. *Tibbett's Motion for a New Trial*

On March 20, 2017 Tibbett filed a notice of intention to move for a new trial. In his motion for a new trial, Tibbett argued the trial court improperly limited Applegate's testimony, which would have impeached Marshall's trial testimony that he had never grabbed anyone by the groin. Tibbett attached a declaration by Applegate in which he declared, "While I was washing dishes facing the sink, [Marshall] came up from behind me without my initially being aware of his presence, and put his hand and forearm between my legs and struck me with an abrupt upward force into my testicles. [H]e would jam his hand and forearm into my testicles, start to lift me up, flip me upside down, and then put me in the sink. This was very painful and when I asked 'What are you trying to do, crush another guy's testicles?['] he replied, 'Hey guys, this is how you get someone out of doing dishes.' He made the statement to other personnel as though he were instructing them . . . ." Applegate stated that on three additional occasions, "[Marshall] came up from behind me and while jerking upwards on my belt, he brought the inseam of my pants into my testicles and tried to put me in the sink."

Applegate further declared he had seen Marshall "being aggressive with patients" during service calls, including "throwing [a patient] down using excessive force."

Tibbett argued the trial court, by declining his request for a sidebar, failed to give him an opportunity to make an offer of proof. Tibbett asserted he would have shown the testimony was admissible to show "Marshall's intent and custom" and to impeach his credibility.

Tibbett also argued the trial court improperly limited his closing argument, and the special verdict form was misleading and improper. The court denied Tibbett's motion. Tibbett timely appealed the judgment.[4]

DISCUSSION

A. *The Jury's Verdict Was Not Inconsistent*

Tibbett contends the jury, by concluding in response to questions 1 and 2 that Marshall engaged in a willful and unprovoked physical act of aggression (kicking Tibbett in the groin), implicitly found Marshall intended to inflict injury on Tibbett because of the nature of the contact between Marshall's foot and Tibbett's testicles, which finding was inconsistent with the jury's answer to question 3 (that Marshall did not intend to harm Tibbett).[5] On this basis Tibbett surmises the jury must

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[4] Tibbett does not argue the trial court erred in denying his motion for a new trial.

[5] Although Tibbett notes he objected to the verdict form, he does not dispute he was required to show Marshall intended to injure him. "Where an employee is injured in the course and scope of his or her employment, workers' compensation is

have improperly believed question 3 asked whether Marshall intended "to inflict some type of permanent physical harm," which the jury was not required to find. We conclude the jury's findings can be reconciled.

"'"'The inconsistent verdict rule is based upon the fundamental proposition that a factfinder may not make inconsistent determinations of fact based on the same evidence. . . .' [Citations.] An inconsistent verdict may arise from an inconsistency between or among answers within a special verdict [citation] or irreconcilable findings. [Citation.] Where there is an inconsistency between or among answers within a special verdict, both or all the questions are equally against the law. [Citation.] The appellate court is not permitted to choose between inconsistent answers.'"'" (*Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 124 [reversing judgment and remanding for new trial based on inconsistent special verdict findings that defendant was liable for negligent failure to warn, but not strict liability failure to warn based on same alleged

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generally the exclusive remedy of the employee . . . ." (*LeFiell Manufacturing Co. v. Superior Court* (2012) 55 Cal.4th 275, 279; accord, *King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1046.) However, under a statutory exception to the exclusivity rule, "a civil suit is permissible when an employee proximately causes another employee's injury or death by a 'willful and unprovoked physical act of aggression.'" (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1002, quoting § 3601, subd. (a)(1).) "[A] 'willful and unprovoked physical act of aggression' includes an intent to injure requirement." (*Torres*, at p. 1006; *Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1383 ["The term 'aggression' suggests intentional harmful conduct."].)

defect]; accord, *Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 720 [jury's finding of negligent failure to warn was "logically and legally inconsistent" with jury's finding of no liability on strict liability failure to warn].)

"'A special verdict is inconsistent if there is no possibility of reconciling its findings with each other.'" (*Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1048; accord, *King v. State of California* (2015) 242 Cal.App.4th 265, 296.) "'[W]e review a special verdict de novo to determine whether its findings are inconsistent. [Citation.] . . . '"'Where the findings are contradictory on material issues, and the correct determination of such issues is necessary to sustain the judgment, the inconsistency is reversible error.'"'" (*Markow*, at p. 1048; *King*, at p. 296.)

Here, it is possible to reconcile the jury's findings. The jury did not necessarily find Marshall's willful physical act of aggression was an *intentional* kick to the groin. Rather, the evidence supported the conclusion Marshall intended to demonstrate a realistic, aggressive kick short of contact, which could reasonably be perceived by the recipient as a real, present, and apparent threat of bodily harm, even if no physical contact was intended or made. Such a finding is consistent with Marshall's testimony he did not intend to make physical contact, as well as the testimony by Marshall and Gamble that Tibbett lunged into Marshall's kick, causing unintended contact with Tibbett's groin.[6]

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[6] Because we conclude the jury did not necessarily find Marshall's willful physical act of aggression was an intentional kick to the groin, we do not reach Tibbett's argument a person

Tibbett also suggests substantial evidence does not support the jury's finding Marshall did not intend to harm Tibbett. "However, when the trier of fact has expressly or implicitly concluded the party with the burden of proof did not carry the burden and that party appeals, '"it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a [jury] determination that it was insufficient to support a finding.'"'" (*Patricia A. Murray Dental Corp. v. Dentsply Internat., Inc.* (2018) 19 Cal.App.5th 258, 270; accord, *Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 734 [employer's evidence did not compel a result contrary to jury's finding that plaintiffs' requested accommodations would not impose undue hardship on employer in an action alleging failure to accommodate under Fair Employment and Housing Act]; *Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838.)

Tibbett relies entirely on his own testimony to show Marshall intended to injure him, which was contradicted by his own testimony and that of other witnesses, as well as Tibbett's medical records. Tibbett's description of the kick, that Marshall asked him to stand, held a piece of paper in his face, and then kicked him hard in the groin, was contradicted by both Marshall

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who willfully kicks an individual in the groin must necessarily intend to cause that individual harm.

and Gamble, who testified Tibbett lunged into Marshall's kick. Marshall testified he did not intend to make physical contact with Tibbett or hurt him in any way. Further, Tibbett contradicted himself on this point, as evidenced by his medical records, in which he referred to his cause of injury as an "accident," and his deposition testimony, in which he stated he did not believe Marshall intentionally wanted to hurt him.

Tibbett also testified he was not aware of any reason Marshall would intentionally hurt him, speculating Marshall may have been "upset that [Tibbett] was talking about another captain not getting the sheriff fast enough" to assist Tibbett in his encounter with the hostile individual two days before the injury. However, multiple witnesses, including Tibbett, testified Marshall and Tibbett had a good relationship, and there was no apparent reason why Marshall would seek to harm Tibbett. Marshall, Gamble, and Hardie each testified Marshall and Tibbett had a "father-son" type relationship, and that the incident appeared to be an accident. Thus, the evidence does not compel the conclusion Marshall intended to injure Tibbett as a matter of law.[7]

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[7] Tibbett also makes the conclusory assertion that question 1 of the special verdict form "altered the burden of proof beyond that which was required by law" because it tracks the elements of assault, rather than battery. Tibbett has forfeited this argument by failing to cite legal authority. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363 ["If a party's briefs do not provide legal argument and citation to authority on each point raised, '"the court may treat it as waived, and pass it without consideration."'"]; *In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 227 ["'Issues not supported by citation to legal authority are subject to forfeiture.'"].) Moreover, the jury

B. *Tibbett Forfeited His Argument the Trial Court Improperly Excluded Applegate's Testimony*

Tibbett argues the trial court erroneously excluded Applegate's testimony about an incident in which Marshall struck Applegate in the groin, three occasions on which Marshall "jerk[ed] upwards" on Applegate's belt and brought the inseam of his pants into his testicles, and Marshall's aggressiveness toward and use of force against patients. Tibbett contends this testimony was relevant to show Marshall's kick to Tibbett's groin was intentional, not accidental, to show Marshall had a habit or custom of striking employees' groins, and to impeach Marshall's testimony he never "kicked anybody before" or "grabbed anybody by the groin before." We conclude Tibbett forfeited this argument.

"In general, a judgment may not be reversed for the erroneous exclusion of evidence unless 'the substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means.' " (*People v. Anderson* (2001) 25 Cal.4th 543, 580, quoting

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found in Tibbett's favor as to question 1, so he could not have been prejudiced by any alteration of the burden of proof. (See *Linton v. DeSoto Cab Co., Inc.* (2017) 15 Cal.App.5th 1208, 1224 ["Plaintiff has the burden of affirmatively demonstrating prejudice, that is, that the errors have resulted in a miscarriage of justice."]; *Sabato v. Brooks* (2015) 242 Cal.App.4th 715, 724-725 ["'Reversal is justified "only when the court, 'after an examination of the entire cause, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error."'"].)

Evid. Code, § 354, subd. (a); accord, *People v. Armstrong* (2019) 6 Cal.5th 735, 791 [defendant forfeited argument evidence of murder accomplice's reputation was improperly excluded by failure to make offer of proof].) Tibbett made no offer of proof at trial relating to Applegate's testimony, and he has identified only one question posed to Applegate as to which the trial court excluded a response: "Did Gary Marshall ever grab you by the groin?" After the court declined to discuss the sustained objection at sidebar, Mann asked one further question regarding self-defense demonstrations led by Marshall, then concluded his questioning of Applegate.

In his motion for a new trial, Tibbett identified testimony Applegate would have provided, including that Marshall once struck him in the testicles from behind while Applegate was washing dishes, that Marshall on three occasions jerked Applegate by his belt, pulling his pants into his testicles, and that Applegate had witnessed Marshall being aggressive toward and using excessive force against patients. But by failing to make an offer of proof or inquire about Marshall striking Applegate in the groin, lifting Applegate by the belt, or mistreating patients, Mann failed to make known to the court the substance, purpose, and relevance of this evidence. Based on Mann's single question about the act of grabbing the groin, the trial court may have reasonably assumed Mann was asking about a sexual act of grabbing Applegate in light of Tibbett's inclusion in the first amended complaint of a cause of action for sexual battery, which was not submitted to the jury. Mann could have, but did not follow up with a question about whether Marshall struck Applegate in the groin, pulled his pants into his testicles, or used excessive force against patients. Mann's single question about

grabbing did not apprise the trial court of the substance of Applegate's proposed testimony or of the relevance of the grabbing to the conduct at issue, a kick to the groin in the context of a workplace demonstration.

Tibbett argues he has not forfeited his contentions because it would have been futile to make an offer of proof. It is true that "'[w]here an entire class of evidence has been declared inadmissible or the trial court has clearly intimated it will receive no evidence of a particular class or upon a particular issue, an offer of proof is not a prerequisite to raising the question on appeal, and an offer, if made, may be broad and general.'" (*People v. Schmies* (1996) 44 Cal.App.4th 38, 54; accord, *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1142 [offer of proof unnecessary where trial court erroneously excluded all extrinsic evidence of the mutual intention of the parties in contract action].) But the record reflects only that the trial court sustained an objection to a single question based on relevance, not that the court broadly excluded a class of evidence or repeatedly ruled against Tibbett's requests to introduce testimony of Marshall's behavior with other employees and patients. As noted, Tibbett could have followed up with other, more direct questions and could have renewed his request for a sidebar before concluding his examination. Further, although the trial court rejected Tibbett's request for a sidebar while the jury was present, he could have waited for a break to make an offer of proof outside of the presence of the jury. For example, Tibbett could have requested to make an offer of proof during the 15-minute recess that immediately followed the trial court's excusal of Applegate from the witness stand. Given Tibbett's failure to make any effort to apprise the court of the substance, purpose,

and relevance of the excluded evidence other than his single question and lone request for a sidebar, Tibbett forfeited his contentions as to the excluded testimony.

C. *The Trial Court Did Not Improperly Limit Tibbett's Closing Arguments*

Tibbett contends the trial court improperly interfered with his closing argument during his discussion of Marshall's credibility. However, Tibbett fails to cite to the reporter's transcript in support of his argument, instead only generally asserting the trial court prevented Mann from pointing out inconsistencies in Marshall's testimony. Tibbett has therefore forfeited this argument. (*Martine v. Heavenly Valley Limited Partnership* (2018) 27 Cal.App.5th 715, 729 [appellant's arguments were "forfeited for failure to supply cogent and supported argument with citations to the record affirmatively demonstrating error"]; *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074 ["'We are not required to search the record to ascertain whether it contains support for [appellant's] contentions.'"].)

Even if Tibbett did not forfeit this argument, on the merits the trial court did not err. "Trial courts have broad discretion to control the duration and scope of closing arguments." (*People v. Simon* (2016) 1 Cal.5th 98, 147; accord, *People v. Masters* (2016) 62 Cal.4th 1019, 1073-1074 [""[T]he trial court retains discretion to impose reasonable time limits and to ensure that argument does not stray unduly from the mark.""].) Moreover, "the court has the power to expedite proceedings which, in the court's view, are dragging on too long without significantly aiding the trier of fact." (*California Crane School, Inc. v. National Com. for*

Certification of Crane Operators (2014) 226 Cal.App.4th 12, 22; accord, *People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51, 148 ["The fact that relevant evidence is admissible does not mean that a trial court may not restrict a party from making an unduly time-consuming presentation of its evidence."].)

Here, the trial court's intrusion into Tibbett's closing argument was minimal and well within its discretion. During closing argument, Mann presented to the jury a slideshow featuring excerpts from the transcript of Marshall's trial testimony. After Mann read numerous transcript excerpts to the jury, the court warned him not to read the "whole" transcript, and asked whether he had "more than one other page" left to read. Mann responded he was finished reading from the transcript. The trial court's management of the proceedings by urging Mann to limit his eighth recitation of asserted inconsistencies was well within its discretion. Moreover, Tibbett has not identified any portion of the transcript he was not allowed to read to the jury or any argument he was not able to make. To the contrary, the record shows Tibbett used his desired slideshow and transcript excerpts to argue Marshall's testimonial inconsistencies.

D. *There Is No Cumulative Error*

Tibbett's final argument is that even if no single error warrants reversal, the cumulative effect of the errors requires reversal. The cumulative error doctrine applies when "'the cumulative effect of the errors . . . makes[s] it "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error[s]."'"

(*Victaulic Co. v. American Home Assurance Co.* (2018) 20 Cal.App.5th 948, 987; accord, *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1539.) Because Tibbett has identified no individual error, there was no cumulative error.

DISPOSITION

The judgment is affirmed. Defendants are to recover their costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.